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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 1159 of 2002
Date of Decision : 27.8.2007

Prem Kumar **...Appellant**

Versus

Virender Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Rakesh Gupta, Advocate the appellant.

Mr. V. K. Jain, Senior Advocate with
Mr. Rakesh Nagpal, Advocate for respondent no.1

Dr. Gurmeet Singh, Advocate for respondent no.2.

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RAJESH BINDAL, J.

One of the defendant is in second appeal, against the concurrent findings of facts by both the Courts below where suit for specific performance filed by the respondent/plaintiff against two defendants, was decreed. One of the defendant after losing first appeal before the Lower Appellate court chose not to file second appeal. The defence put by the appellant-defendant to the effect that there was no agreement to sell any property rather the defendant had taken the loan of Rs. 90,000/- in two installments of Rs. 50,000/- and Rs. 40,000/- and as against that an agreement to sell mentioning that the double of amount shall be paid to the respondent was entered into and infact as against the loan amount taken by him a sum of Rs. 36,200/- was paid in installments of Rs. 400/- per day and one installment of Rs. 200/- against 91 receipts. Still further it is submitted that conduct of the respondent in filing the suit after two years from the last date of execution of agreement clearly shows that intention of the parties was not to deal with the property rather it was

simple money transaction. Further, it is submitted that only one of the witness of the agreement to sell was examined and finally in the alternative, it is submitted that in case still this Court does not find favour with the contention of the appellant, in terms of Section 20 of the Specific Relief Act, 1963 (for short 'the Act"), alternative relief should have been granted to the respondents for return of money as the appellant does not have any other premises to carry on his business. Leanred counsel appearing for the appellants relied upon judgments in **K.S.Vidyanadam and others Vs. Vairavab AIR 1997 Supreme Court 1751** and **Tejram Vs. Patirambhau AIR 1997 Supreme Court 2702.**

On the other hand, learned counsel appearing for respondent no.1-plaintiff submitted that story put up by the appellant is false and concocted. Both the Courts have already disbelieved the same plea raised by the appellant-defendant. He submitted that initially Rs. 1 lac was paid as earnest money on August 9, 1993 at the time of entering into agreement and thereafter on October 6, 1993 another sum of Rs. 80,000/- was paid for which due endorsement was made. Total consideration of transaction was Rs. 6 lacs. As against the repayment in installments is concerned, it was submitted that the receipts were not concerning the appellant as the same do not mention his name. It was only that the appellant obtained these receipts from some one else, who was paying amount due to the respondent in installments. As far as plea of Section 20 of the Act is concerned, issue was never raised before the Court below. It was submitted that the facts in the judgment relied upon by the appellant are quite distinguishable as in both the cases specific plea raised by the parties therein was that during the period between the agreement to sell and date to execute the sale deed, there was substantial increase in the price of the property, which was about three times and still further there was substantial delay of 2-1/2 years in filing the suit. He submitted that there is no such plea raised in the present case and the delay also is not to that extent.

After hearing the learned counsel for the parties, I do not find any merit in the contentions raised by the appellant. As far as agreement in question is concerned, it is admitted by the appellant and proforma

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respondent that they had executed the agreement but plea raised in the defence was that same was security for the loan taken from respondent no.1-plaintiff. Besides, even admission by the appellant and proforma respondent, respondent-plaintiff had produced other evidence also to prove execution of the agreement, payment of amount of earnest money. Once agreement itself was proved, the contents written therein are to be believed and mere on oral testimony presumption cannot be raised that the intention of the parties, while executing the agreement, was different than what was the mentioned therein. Still further plea of loan raised by the defendant was found to be totally false when the claim made by them showing repayment of part of the amount in installments could not be substantiated by them as the receipts produced by them did not belong to the defendants. It has also been noticed by the trial court in its judgment in para 8 that even father of the defendants had also signed the agreement. As regard the plea of alternative relief in terms of Section 20 of the Act is concerned, the same having not been raised before the Courts below cannot be raised in the second appeal as the facts as are noticed by Hon'ble the Supreme Court in the judgment referred to by counsel for the appellant are not born out from from the record of the present case.

Accordingly, I do not find any merit in the present appeal and the same is dismissed.

August 27, 2007 **(Rajesh Bindal)**
Pka **Judge**